

## **502 KAR 32:010. Centralized database for DNA identification records.**

RELATES TO: KRS 17.169, 17.170, 17.175, 10 U.S.C. 1565, 42 U.S.C. 14131, 42 U.S.C. 14132

STATUTORY AUTHORITY: KRS 15A.160, 17.170(5), 17.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary to promulgate administrative regulations and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 17.170(5) authorizes the Justice and Public Safety cabinet to promulgate administrative regulations concerning the sampling and packaging of DNA. KRS 17.175(6) requires the cabinet to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Authorized personnel" is defined by KRS 17.169(2).

(2) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone.

(3) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(4) "DJJ" means the Department of Juvenile Justice.

(5) "DNA" means deoxyribonucleic acid.

(6) "DNA database" means the database that is part of the federal Combined DNA Index System maintained by the Kentucky State Police under agreement with the Federal Bureau of Investigation and contains the DNA profiles for qualifying offenders, crime scene specimens, unidentified human remains, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(7) "DNA Database Supervisor" means a person designated as the point of contact with the Federal Bureau of Investigation to insure the proper operation and security of the database.

(8) "DNA sample" is defined by KRS 17.169(1).

(9) "DOC" means the Department of Corrections.

(10) "Evidentiary item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(11) "KSP" means the Kentucky State Police.

(12) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(13) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a DNA sample from a qualifying offender by finger prick lancet or other biological sample for the purpose of obtaining a DNA profile.

(14) "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) In accordance with KRS 17.170(2), DNA samples shall be collected by authorized personnel.

(2) In accordance with KRS 17.170(5), KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit

shall contain the collection materials necessary to obtain either a blood sample by a finger stick lancet procedure or other biological sample. Each offender DNA collection kit shall be secured in protective wrapping materials in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A and for the "Offender DNA Collection Kit Information Sheet (buccal swab method)", KSP Form No. 47-B. The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample or other biological samples on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed accurately with as much biographical and offense-related information available concerning the qualifying offender. The qualifying offender's left and right thumbprints shall be taken when the sample is collected, except in the instance of amputation or injury to the qualifying offender's thumbs, in which case another digit shall be printed per the instructions on the Offender DNA Collection Kit Information Sheet. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the DNA sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender. The DNA sample shall be taken by DOC or DJJ authorized personnel and shall not be self-collected by the qualifying offender.

(4) Following collection of a blood or other biological sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request For Examination," KSP Form No. 26.

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a DNA sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion In DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample shall be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection of DNA Samples from Crime Scenes for Inclusion in DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 6. Quality Assurance Standards for DNA Database. (1) The proficiency of examiners conducting DNA analysis for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(2).

(2) Only DNA profiles obtained as a result of DNA analysis shall be entered in the DNA database.

Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database shall only be accessed as approved by the DNA Database Supervisor by Kentucky State Police employees who show proficiency in DNA testing and the DNA database, and maintain continuing education hours pursuant to KSP forensic lab policy and federal requirements in accordance with 42 U.S.C. 14131. The DNA Database Supervisor may provide KSP interns with limited access to the DNA database pursuant to KSP forensic lab policy.

(3) All data and information generated by the DNA Database are confidential.

(4) Searches shall be conducted for law enforcement, criminal justice agencies, or governmental forensic science laboratories approved by the DNA Database Supervisor pursuant to 42 U.S.C. 14132.

(5) Access to the DNA Database shall be through computers that are utilized solely for accessing the DNA Database by authorized users and are located in areas secured by the Kentucky State Police.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)," KSP Form No. 47-A, January 2006;

(b) "KSP Request For Evidence Examination," KSP Form No. 26, March 2001;

(c) "Offender DNA Collection Training Program for Trainers", KSP Form No. 139, June 2008;

(d) "Offender DNA Collection Training Program for Collectors", KSP Form No. 140, June 2008;

(e) "Offender DNA Collection Training Program", KSP Form No. 141, June 2008; and

(f) "Offender DNA Collection Kit", KSP Form No. 47-B, August 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (32 Ky.R. 1851; 2007; eff. 6-2-2006 33 Ky.R. 3459; eff. 8-6-07; 35 Ky.R. 381; 817; eff. 10-31-08; 37 Ky.R. 966; 11-5-2010; Crt eff. 2-26-2020.)